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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,470	04/06/2001	Richard W. Layne	41914.551	6760
46333	7590	08/19/2008		
HAYNES AND BOONE, LLP			EXAMINER	
901 Main Street			NGUYEN, CAMTU TRAN	
Suite 3100				
Dallas, TX 75202			ART UNIT	PAPER NUMBER
			3772	
			MAIL DATE	DELIVERY MODE
			08/19/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/828,470	<b>Applicant(s)</b> LAYNE ET AL.
	<b>Examiner</b> Camtu T. Nguyen	<b>Art Unit</b> 3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

1) Responsive to communication(s) filed on 25 June 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,4,12 and 23 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,4,12 and 23 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to RCE***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 6-25-2008 has been entered. Claim 1 has been amended.

Applicant's comments directed to the 112, 1<sup>st</sup> paragraph and to the 102 rejections applied in the previous Office Action are noted and persuasive, thus, those rejections have been withdrawn.

The claims, as amended, have been carefully studied and are rejected as follows.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 12, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiley et al (U.S. Patent No. 6,248,110). Reiley et al discloses in Figures 1 and 2 a vertebral body (26) includes an exterior forms from compacted cortical bone (28) which encloses an

interior volume (30) of cancellous bone (32). Figure 4 illustrates a tool (48) comprising a hollow catheter tube (50) including a circumferential wall.

With regards to the distal end recited in claim 1, the hollow catheter tube (50) has a distal end (54), as shown in Figure 4.

With regards the extension protruding from the circumferential wall and beyond the distal end, according to applicant's the specification on page 15 lines 6-7, the extension is the platform, structurally. In addition, the specification on page 15 lines 16-17 discloses the platform (220) could be formed integrally with the hollow member (210), thus, for purposes of broad interpretation of the latter disclosure, it is reasonable for one skilled in the art to interpret the Reiley's Figure 5k(1) is consistent with applicant's specification. See illustration below.

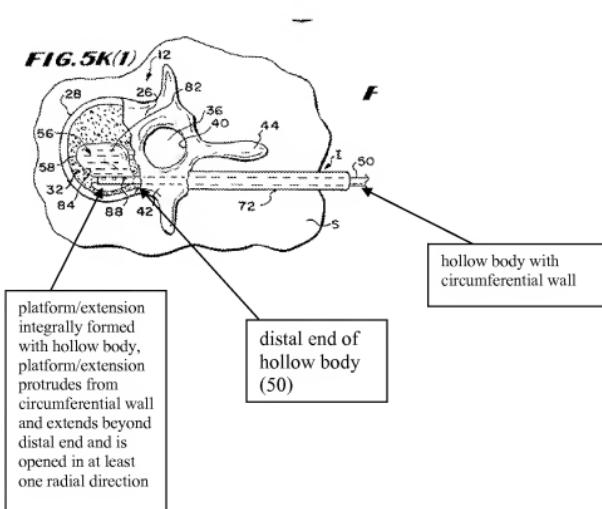


Figure 5K(1) illustrates the catheter (50) introduced into the interior volume (30) occupied in the cancellous bone (32) and the expandable body (56) expanding on one side of the distal end of the catheter (50).

Figure 5K(1) illustrates the platform/extension induce the expandable body (56) from expanding in more than one direction and expanding from the distal end towards the platform/extension. Figure 7 illustrates the injector tip (90) occupying in cavity (84) while the expandable body (56) collapses and the injector tip (90) injects filler material into the cavity (84).

With regards to claim 12, bone filling material, such as artificial bone substitute or flowable synthetic bone material or methyl methacrylate bone cement is known in the art of bone filling.

The Reiley et al device would perform steps recited in method claim 1.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Camtu T. Nguyen/  
Examiner, Art Unit 3772

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772